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American Jurisprudence, Second Edition | May 2021 Update

Consumer and Borrower Protection

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Part Two. State Legislation; Uniform Laws

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Consumer and Borrower Protection

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The provisions of the Uniform Consumer Credit Code generally regulating agreements and practices specifically regulate home solicitation sales.¹

The term "home solicitation sale" is defined in the Uniform Consumer Credit Code as a consumer credit sale of goods or services, except primarily for an agricultural purpose, in which the seller or a person acting for the seller personally solicits the sale, and the buyer's agreement or offer to purchase is given to the seller or such person at a residence.²

The term "home solicitation sale" does not include a sale made pursuant to a preexisting open-end credit account with the seller or pursuant to prior obligations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale, a transaction conducted and consummated entirely by mail or telephone, or a sale that is subject to the provisions of the Federal Truth in Lending Act on the consumer's right to rescind certain transactions.³

A sale that would be a home solicitation sale if credit were extended by the seller is nonetheless so because the goods or services are paid for in whole or in part by use of a credit card or by a consumer loan with respect to which the lender is subject to claims and defenses arising from the sale, and the buyer has the same rights against the card issuer or lender as against the seller under the provisions of the Code under discussion.⁴

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Footnotes

- 1 [Unif. Consumer Credit Code §§ 3.501 to 3.505.](#)
As to the right to cancel, generally, see [§ 355.](#)
- 2 [Unif. Consumer Credit Code § 3.501.](#)
As to the definition of a consumer credit sale, see [§ 307.](#)
- 3 [Unif. Consumer Credit Code § 3.501.](#)
As to provisions of the Truth in Lending Act pertaining to a consumer's right to rescind, see §§ [113](#) to [123.](#)
- 4 [Unif. Consumer Credit Code § 3.501.](#)
As to a credit card issuer as subject to claims and defenses, see [§ 352.](#)
As to a lender as subject to claims and defenses, see [§ 353.](#)

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§ 355. Buyer's right to cancel

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The Uniform Consumer Credit Code provides that, except as otherwise provided for in the statutory provision dealing with emergencies,¹ in addition to any right otherwise to revoke an offer, a buyer may cancel a home solicitation sale until midnight of the third business day after the date on which the buyer signs an agreement or offer to purchase which complies with the Code.² Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement or offer to purchase.³ Notice of cancellation, if given by mail, is given when it is properly addressed, postage prepaid, and deposited in a mailbox.⁴ The notice of cancellation given by the buyer need not take a particular form, however, and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale.⁵

The right to cancel under the foregoing provisions is not exclusive; independently of the Code, a buyer may have the right to revoke an offer to purchase that has not been accepted by the seller; the right to rescind because of fraud, duress, breach of warranty, or other cause; or the right to cancel under the Federal Truth in Lending Act.⁶ Also, until the seller has complied with the provisions of the Code regulating the form of agreement or offer and requiring a statement of the buyer's rights,⁷ the buyer may cancel the sale by notifying the seller in any manner and by any means of the intention to cancel.⁸

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Footnotes

¹ [Unif. Consumer Credit Code § 3.502\(5\)](#).

- 2 [Unif. Consumer Credit Code § 3.502\(1\).](#)
As to the form of agreement or offer required by the Code, see [§ 356](#).
- 3 [Unif. Consumer Credit Code § 3.502\(2\).](#)
- 4 [Unif. Consumer Credit Code § 3.502\(3\).](#)
- 5 [Unif. Consumer Credit Code § 3.502\(4\).](#)
- 6 Comment, following [Unif. Consumer Credit Code § 3.502](#).
- 7 [§ 356](#).
- 8 [Unif. Consumer Credit Code § 3.503\(3\).](#)

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§ 356. Form of agreement or offer; statement of buyer's rights

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The Uniform Consumer Credit Code requires the seller in a home solicitation sale to present to the buyer and obtain the buyer's signature to a written agreement or offer to purchase that designates as the date of the transaction the date on which the buyer actually signs and contains a statement of the buyer's rights which complies with Code provisions.¹ A copy of any writing required by the statute to be signed by the buyer, completed at least as to the date of the transaction and the name and mailing address of the seller, must be given to the buyer at the time he or she signs the writing.²

The statement as to the buyer's rights above referred to must either comply with any notice of cancellation or similar requirement of any trade regulation rule of the Federal Trade Commission that applies to the home solicitation sale³ or appear under a conspicuous caption as set out in the statute⁴ and must read as statutorily specified.⁵

Until a seller has complied with these provisions of the Code, the buyer may cancel the sale by notifying the seller in any manner and by any means of the buyer's intention to cancel.⁶

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Footnotes

- ¹ [Unif. Consumer Credit Code § 3.503\(1\)](#).
As to emergency situations, see [§ 355](#).
- ² [Unif. Consumer Credit Code § 3.503\(1\)](#).

- 3 Unif. Consumer Credit Code § 3.503(2)(a).
- 4 Unif. Consumer Credit Code § 3.503(2)(b).
- 5 Unif. Consumer Credit Code § 3.503(2)(b).
- 6 Unif. Consumer Credit Code § 3.503(3).

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§ 357. Restoration of down payment

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Under the Uniform Consumer Credit Code, a seller in a home solicitation sale must, within 10 days after a notice of cancellation¹ has been received or an offer to purchase has been otherwise revoked, tender to the buyer any payments made by the buyer, any note or other evidence of indebtedness, and any goods traded in.²

If the down payment includes goods traded in, the goods must be tendered in substantially as good condition as when received by the seller, and if the seller fails to tender the goods as thus provided, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.³

Until the seller has complied with the obligations imposed, the buyer may retain possession of goods delivered to the buyer by the seller and has a lien on the goods in the buyer's possession or control for any recovery to which the buyer is entitled.⁴

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Footnotes

- ¹ § 355.
- ² Unif. Consumer Credit Code § 3.504(1).
- ³ Unif. Consumer Credit Code § 3.504(2).
- ⁴ Unif. Consumer Credit Code § 3.504(3).

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The Uniform Consumer Credit Code provides that, except as provided with regard to the buyer's statutory right to retain goods and have a lien on them¹ and allowing for ordinary wear and tear or consumption of the goods contemplated by the transaction within a reasonable time after a home solicitation sale has been canceled or an offer to purchase revoked, the buyer must upon demand tender to the seller any goods delivered by the seller but is not obligated to tender at any place other than the buyer's residence.² If the seller fails to demand possession of the goods within a reasonable time after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them.³ For the purpose of the foregoing provisions, a reasonable time is presumed to be 40 days.⁴

The buyer has a duty to take reasonable care of the goods in the buyer's possession before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk.⁵

If a home solicitation sale is canceled, the seller is not entitled to compensation for any services he or she performed pursuant to it.⁶

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Footnotes

¹ § 357.

² Unif. Consumer Credit Code § 3.505(1).

- 3 Unif. Consumer Credit Code § 3.505(1).
- 4 Unif. Consumer Credit Code § 3.505(1).
- 5 Unif. Consumer Credit Code § 3.505(2).
- 6 Unif. Consumer Credit Code § 3.505(3).

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1. In General

§ 359. Generally

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The Uniform Consumer Credit Code provisions pertaining to insurance¹ apply to insurance provided or to be provided in relation to a consumer credit transaction.² However, the Code contains alternate provisions³ depending upon the type of statutes a state already has in place in this area.⁴ The Code also provides that the Administrator of the Code and the commissioner of insurance or a similar official are to consult and assist one another in maintaining compliance with the Code.⁵ The Code also contains a provision with respect to the adoption of rules by a commissioner of insurance or similar local official and as to administrative action by such individual,⁶ depending on which statutes and systems a state has in place to regulate insurance.⁷

The Code does not authorize the issuance of insurance prohibited under any statute or rule governing the business of insurance.⁸

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Footnotes

- ¹ [Unif. Consumer Credit Code §§ 4.101 to 4.304.](#)
- ² [Unif. Consumer Credit Code § 4.102\(1\).](#)
- ³ [Unif. Consumer Credit Code § 4.102\(2\).](#)
- ⁴ [Comments, following Unif. Consumer Credit Code § 4.102.](#)
- ⁵ [Unif. Consumer Credit Code § 4.111.](#)

- 6 [Unif. Consumer Credit Code § 4.112.](#)
7 [Comment, following Unif. Consumer Credit Code § 4.112.](#)
8 [Unif. Consumer Credit Code § 4.104\(1\).](#)

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§ 360. Definitions

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Under the Uniform Consumer Credit Code, consumer credit insurance means insurance, except insurance on property, by which the satisfaction of debt in whole or in part is a benefit provided.¹ However, this term does not include insurance provided in relation to a consumer credit transaction in which a payment is scheduled more than 10 years after the extension of credit,² insurance issued by an insurer as an isolated transaction not relating to an agreement or plan for insuring consumers of or from the creditor,³ or insurance indemnifying the creditor against loss due to the consumer's default.⁴

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Footnotes

- ¹ [Unif. Consumer Credit Code § 4.103\(1\).](#)
- ² [Unif. Consumer Credit Code § 4.103\(1\)\(a\).](#)
- ³ [Unif. Consumer Credit Code § 4.103\(1\)\(b\).](#)
- ⁴ [Unif. Consumer Credit Code § 4.103\(1\)\(c\).](#)

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§ 361. Creditor's provision of and charge for insurance; excess charges

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[What constitutes “fraudulent” or “unconscionable” agreement or conduct within meaning of state consumer credit protection act, 42 A.L.R.4th 293](#)

The Uniform Consumer Credit Code permits a creditor to agree to provide insurance and to contract for and receive a charge for insurance separate from and in addition to other charges except as otherwise provided and subject to Code provisions on additional charges and maximum finance charges.¹ A creditor need not make a separate charge for insurance provided or required by him or her.²

The Code provides that, if a creditor agrees with a consumer to provide insurance, the insurance must be evidenced by an individual policy or certificate of insurance delivered or mailed to the consumer within 30 days after the term of the insurance commences under the agreement.³ In the alternative, the creditor must promptly notify the consumer of any failure or delay in providing such insurance.⁴

If a creditor agrees to provide insurance, the creditor must pay to the consumer or the consumer's estate all proceeds of consumer credit or property insurance received by the creditor in excess of the amount to which the creditor is entitled within 10 days after receipt by the creditor of the proceeds.⁵

The Code contains certain provisions as to unconscionability.⁶ In applying such provisions to a separate charge for insurance, the Code states that consideration must be given, among other factors, to potential benefits to the consumer including the satisfaction of the consumer's obligations,⁷ the creditor's need for the protection provided by the insurance,⁸ and the relation between the amount and terms of credit granted and the insurance benefits provided.⁹ If consumer credit insurance otherwise complies with Code provisions pertaining to insurance and other applicable law, neither the amount nor the term of the insurance nor the amount of the charge for it is in itself unconscionable.¹⁰

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Footnotes

- | | |
|----|---|
| 1 | Unif. Consumer Credit Code § 4.104(1). |
| | As to maximum finance and additional charges under the Code, see §§ 311 to 323. |
| 2 | Unif. Consumer Credit Code § 4.104(1). |
| 3 | Unif. Consumer Credit Code § 4.105(1). |
| 4 | Unif. Consumer Credit Code § 4.105(1). |
| 5 | Unif. Consumer Credit Code § 4.105(2). |
| 6 | §§ 376, 401. |
| 7 | Unif. Consumer Credit Code § 4.106(1)(a). |
| 8 | Unif. Consumer Credit Code § 4.106(1)(b). |
| 9 | Unif. Consumer Credit Code § 4.106(1)(c). |
| 10 | Unif. Consumer Credit Code § 4.106(2). |

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1. In General

§ 362. Maximum charge by creditor for insurance

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Under the Uniform Consumer Credit Code, if a creditor contracts for or receives a separate charge for insurance, the amount charged to the consumer for the insurance may not exceed the premium to be charged by the insurer, as computed at the time the charge to the consumer is determined, conforming to any rate filings required by law, and made by the insurer with the commissioner of insurance or like official.¹

A creditor who provides consumer credit insurance in relation to open-end credit may calculate the charge to the consumer in each billing cycle by applying the current premium rate to the balance in the manner permitted with respect to finance charges for credit sales pursuant to open-end credit.²

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¹ [Unif. Consumer Credit Code § 4.107\(1\).](#)

² [Unif. Consumer Credit Code § 4.107\(2\).](#)

As to finance charges in open-end credit transactions, see [§ 313](#).

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§ 363. Charge for insurance in connection with deferral, refinancing, or consolidation; duplicate charges

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The Uniform Consumer Credit Code authorizes deferrals,¹ refinancing,² and consolidation.³ A creditor may not contract for or receive a separate charge for insurance in connection with such a deferral, a refinancing, or a consolidation unless certain conditions are met.⁴ These conditions are: the consumer agrees at or before the time of the deferral, refinancing, or consolidation that the charge may be made;⁵ the consumer is or is to be provided with insurance for an amount or a term, or insurance of a kind, in addition to that to which the consumer would have been entitled had there been no deferral, refinancing, or consolidation;⁶ the consumer receives a refund or credit because of any unexpired term of existing insurance in the amount required if the insurance were terminated;⁷ and the charge does not exceed the amount permitted by the Code.⁸

A creditor may not contract for or receive a separate charge for insurance that duplicates insurance with respect to which the creditor has previously contracted for or received a separate charge.⁹

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Footnotes

¹ § 317.

² § 318.

- 3 § 319.
- 4 Unif. Consumer Credit Code § 4.110(1).
- 5 Unif. Consumer Credit Code § 4.110(1)(a).
- 6 Unif. Consumer Credit Code § 4.110(1)(b).
- 7 Unif. Consumer Credit Code § 4.110(1)(c).
- As to refunds for insurance charges, see § 364.
- 8 Unif. Consumer Credit Code § 4.110(1)(d).
- As to maximum charges by the creditor for insurance, see § 362.
- 9 Unif. Consumer Credit Code § 4.110(2).

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§ 364. Refund required; amount

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The Uniform Consumer Credit Code provides that, if a consumer credit transaction other than a consumer lease is prepaid in full by the proceeds of consumer credit insurance, the consumer or the consumer's estate is entitled to a refund of any portion of a separate charge for insurance that is retained by the creditor or returned to the creditor by the insurer because of prepayment unless the charge was computed from time to time on the basis of the balances of the consumer's account.¹

The Code provisions dealing with insurance do not require a creditor to grant a refund if all refunds due amount to less than \$1.² Also, except as provided in the statute governing refund upon prepayment by insurance proceeds,³ the Code provisions pertaining to insurance do not require the creditor to account to the consumer for any portion of a separate charge for insurance in some circumstances.⁴

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Footnotes

- ¹ [Unif. Consumer Credit Code § 4.108\(1\).](#)
- ² [Unif. Consumer Credit Code § 4.108\(2\).](#)
- ³ [Unif. Consumer Credit Code § 4.108\(1\).](#)
- ⁴ [Unif. Consumer Credit Code § 4.108\(2\).](#)

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The Uniform Consumer Credit Code prescribes that if a creditor requires insurance, upon notice to the creditor, the consumer has the option of providing the required insurance through an existing policy of insurance owned or controlled by the consumer or through a policy to be obtained and paid for by the consumer but that the creditor may for reasonable cause decline the insurance provided by the consumer.¹

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¹ [Unif. Consumer Credit Code § 4.109.](#)

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Under the Uniform Consumer Credit Code, consumer credit insurance provided by a creditor may be subject to the furnishing of evidence of insurability satisfactory to the insurer.¹ However, whether or not such evidence is required, the term of the insurance must commence no later than when the consumer becomes obligated to the creditor or when the consumer applies for the insurance, whichever is later, with certain specific exceptions.²

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¹ [Unif. Consumer Credit Code § 4.201\(1\).](#)

² [Unif. Consumer Credit Code § 4.201\(1\).](#)

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Generally, under the Uniform Consumer Credit Code, in the case of consumer credit insurance providing life coverage, the amount of insurance may not initially exceed the debt and, if the debt is payable in installments, may not at any time exceed the greater of the scheduled or actual amount of the debt, and in the case of any other consumer credit insurance, the total amount of periodic benefits payable may not exceed at any time the greater of the scheduled or actual amount of the debt.¹ However, if consumer credit insurance is provided in connection with an open-end credit account, the amounts payable as insurance benefits may be reasonably commensurate with the amount of debt as it exists from time to time.² If consumer credit insurance is provided in connection with a commitment to grant credit in the future, the amounts payable as insurance benefits may be reasonably commensurate with the total from time to time of the amount of debt and the amount of the commitment.³ If the debt or the commitment is primarily for an agricultural purpose and there is no regular schedule of payments, the amounts payable as insurance benefits may equal the total of the initial amount of debt and the amount of the commitment.⁴

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Footnotes

- ¹ [Unif. Consumer Credit Code § 4.202\(1\).](#)
- ² [Unif. Consumer Credit Code § 4.202\(2\).](#)
- ³ [Unif. Consumer Credit Code § 4.202\(2\).](#)

4 [Unif. Consumer Credit Code § 4.202\(2\).](#)

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F. Insurance

2. Credit Insurance

§ 368. Filing and approval of rates and forms

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West's Key Number Digest

West's Key Number Digest, Consumer Credit 15

The Uniform Consumer Credit Code provides that all policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements, and riders relating to consumer credit insurance delivered or issued for delivery in the state and the schedules of premium rates or charges pertaining to them must be filed by the insurer with the commissioner of insurance or like official.¹ Within 30 days after the filing of any form or schedule, the official must disapprove it if the premium rates or charges are unreasonable in relation to the benefits provided under the form or if the form contains provisions that are unjust, unfair, inequitable, or deceptive; encourage misrepresentation of the coverage; or are contrary to any provision of the insurance code or of any rule or regulation promulgated under it.² A creditor may not use a form or schedule of premium rates or charges if the insurance commissioner or like official has disapproved the form or schedule and has notified the insurer of the disapproval, and in any case, a creditor may not use a form or schedule unless it has been on file with the insurance commissioner or like official for 30 days or has earlier been approved by him or her, and the insurer has complied with the above provisions respecting insurance.³

If a group policy of consumer credit insurance has been delivered in another state, the forms to be filed by the insurer with insurance officials are the group certificates and notices of proposed insurance, and such officials must approve them if they provide the information that would be required if the group policy were delivered in the state, and the applicable premium rates or charges do not exceed those established by rules or regulations.⁴

Footnotes

- 1 [Unif. Consumer Credit Code § 4.203\(2\).](#)
- 2 [Unif. Consumer Credit Code § 4.203\(2\).](#)
- 3 [Unif. Consumer Credit Code § 4.203\(1\).](#)
- 4 [Unif. Consumer Credit Code § 4.203\(3\).](#)

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F. Insurance

3. Property and Liability Insurance

§ 369. Property insurance

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West's Key Number Digest

West's Key Number Digest, Consumer Credit 15

A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless the insurance covers a substantial risk of loss of or damage to property related to the credit transaction; the amount, terms, and conditions of the insurance are reasonable in relation to the character and value of the property insured or to be insured; and the term of insurance is reasonable in relation to the terms of credit.¹ The term of the insurance is reasonable if it is customary and does not extend substantially beyond a scheduled maturity.²

With respect to a transaction, except pursuant to open-end credit, a creditor may not contract for or receive a separate charge for insurance against loss of or damage to property unless the amount financed exclusive of charges for the insurance is \$300 or more, and the value of the property is \$300 or more.³ If the transaction is pursuant to open-end credit, the Administrator may adopt rules prescribing whether a creditor may contract for or receive a separate charge for property insurance.⁴

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Footnotes

- ¹ [Unif. Consumer Credit Code § 4.301\(1\).](#)
- ² [Unif. Consumer Credit Code § 4.301\(2\).](#)
- ³ [Unif. Consumer Credit Code § 4.301\(3\).](#)
- ⁴ [Unif. Consumer Credit Code § 4.301\(4\).](#)

As to the definition of open-end credit, see [§ 307](#).

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F. Insurance

3. Property and Liability Insurance

§ 370. Property insurance—Insurance on creditor's interest only

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West's Key Number Digest

West's Key Number Digest, Consumer Credit 15

Under the Uniform Consumer Credit Code, if a creditor contracts for or receives a separate charge for insurance against loss of or damage to property, the risk of loss or damage not willfully caused by the consumer is on the consumer only to the extent of any deficiency in the effective coverage of the insurance even though the insurance covers only the interest of the creditor.¹

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Footnotes

¹ [Unif. Consumer Credit Code § 4.302.](#)

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3. Property and Liability Insurance

§ 371. Liability insurance

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West's Key Number Digest

West's Key Number Digest, Consumer Credit 15

A creditor may not contract for or receive a separate charge for insurance against liability unless the insurance covers a substantial risk of liability arising out of the ownership or use of property related to the credit transaction.¹ This provision imposes a restriction with respect to liability insurance comparable to that imposed with respect to property insurance.²

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Footnotes

¹ [Unif. Consumer Credit Code § 4.303.](#)

² Comment, following [Unif. Consumer Credit Code § 4.303.](#)

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3. Property and Liability Insurance

§ 372. Cancellation by creditor

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West's Key Number Digest

West's Key Number Digest, Consumer Credit 15

A creditor may request cancellation of a policy of property or liability insurance only after the consumer's default or in accordance with a written authorization by the consumer.¹ Any such cancellation does not take effect until written notice is delivered or mailed to the consumer.² The above provisions do not apply to an insurance premium loan.³

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Footnotes

- ¹ [Unif. Consumer Credit Code § 4.304.](#)
- ² [Unif. Consumer Credit Code § 4.304.](#)
- ³ [Unif. Consumer Credit Code § 4.304.](#)

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G. Remedies and Penalties

1. In General; Limitations on Creditors' Remedies

§ 373. Restrictions on deficiency judgments

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West's Key Number Digest

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The Uniform Consumer Credit Code imposes extensive restrictions on deficiency judgments.¹ Such restrictive provisions apply to a deficiency on a consumer credit sale of goods or services and on a consumer loan in which the lender is subject to claims and defenses arising from sales and leases.² Under these provisions, a consumer is not liable for a deficiency unless the creditor has disposed of the goods in good faith and in a commercially reasonable manner.³

Practice Tip:

If a creditor brings an action against a consumer for a deficiency judgment after the sale of the collateral, the burden of proof as to the commercial reasonableness of the sale is on the creditor.⁴ Whether a sale of collateral by a creditor was conducted in a commercially reasonable manner is a question of fact to be determined by the trier of fact from a consideration of all relevant factors in the particular case.⁵

The Uniform Consumer Credit Code sets out three situations concerning liability of the consumer if the seller repossesses or voluntarily accepts surrender of goods: (1) if the seller has a security interest in the goods sold, the consumer is not personally liable for the unpaid balance of the debt arising from the sale of a commercial unit of goods of which the cash price was \$1,750 or less;⁶ (2) if the seller has a security interest in goods which were not the subject of the sale and also has a security interest to secure a debt arising from a sale of goods or services and the cash price of the sale was \$1,750 or less, the consumer is not personally liable for the unpaid balance of the debt arising from the sale;⁷ and (3) if a lender has a purchase-money security interest to secure a debt arising from a consumer loan in which the lender is subject to claims and defenses and the net proceeds of the loan were \$1,750 or less, the consumer is not personally liable for the unpaid balance of the debt.⁸ In the second and third situations, the duty of the seller or lender to dispose of the collateral is governed by the provisions on disposition of collateral of the Uniform Commercial Code.⁹

The Code also provides that a consumer may be held liable in damages to the creditor if the consumer has wrongfully damaged the collateral or, after default and demand, wrongfully fails to make the collateral available to the creditor.¹⁰

The Code provides further that if a creditor elects to bring an action against the consumer for a debt arising from a consumer credit sale or consumer loan and if the creditor would not be entitled to a deficiency judgment if he or she took possession of the collateral, upon obtaining judgment, the creditor may not take possession of the collateral, and the collateral is not subject to levy or sale on execution or similar proceedings pursuant to the judgment.¹¹

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Footnotes

- 1 Unif. Consumer Credit Code § 5.103.
- 2 Unif. Consumer Credit Code § 5.103(1).
As to the claims and defenses to which a lender is subject, see § 353.
- 3 Unif. Consumer Credit Code § 5.103(1).
- 4 Kelley v. Commercial Nat. Bank, 235 Kan. 45, 678 P.2d 620, 38 U.C.C. Rep. Serv. 697 (1984); Medling v. Wecoe Credit Union, 234 Kan. 852, 678 P.2d 1115, 38 U.C.C. Rep. Serv. 1840 (1984).
- 5 Kelley v. Commercial Nat. Bank, 235 Kan. 45, 678 P.2d 620, 38 U.C.C. Rep. Serv. 697 (1984); Medling v. Wecoe Credit Union, 234 Kan. 852, 678 P.2d 1115, 38 U.C.C. Rep. Serv. 1840 (1984).
As to default and the enforcement of security interests under the Uniform Commercial Code, see Am. Jur. 2d, Secured Transactions §§ 425 to 641.
- 6 Unif. Consumer Credit Code § 5.103(2).
- 7 Unif. Consumer Credit Code § 5.103(3).
- 8 Unif. Consumer Credit Code § 5.103(4).
- 9 Unif. Consumer Credit Code § 5.103(3), (4).
- 10 Unif. Consumer Credit Code § 5.103(6).
- 11 Unif. Consumer Credit Code § 5.103(7).

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1. In General; Limitations on Creditors' Remedies

§ 374. Restrictions on garnishment

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West's Key Number Digest

West's Key Number Digest, Consumer Credit 19

Before entry of judgment in an action against a consumer for debt arising from a consumer credit transaction, the creditor may not attach unpaid earnings of the consumer by garnishment or like proceedings.¹ Moreover, an employer may not discharge an employee because garnishment or like proceedings were instituted for the purpose of paying a judgment arising from a consumer credit transaction.² Also, the Code imposes extensive limitations on garnishment after the entry of a judgment in favor of a creditor in an action against a consumer for debt arising from a consumer credit transaction.³

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Footnotes

- ¹ [Unif. Consumer Credit Code § 5.104.](#)
- ² [Unif. Consumer Credit Code § 5.106.](#)
- ³ [Unif. Consumer Credit Code § 5.105.](#)

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§ 375. Extortionate extensions of credit

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  17, 19

Extortionate credit transactions are prohibited by a federal statute.¹ If it is the understanding of the creditor and the consumer at the time an extension of credit is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person, the repayment of the extension of credit is unenforceable through civil judicial processes against the consumer.²

The Code also provides that if it is shown that an extension of credit was made at an annual rate exceeding 45% and that the creditor then had a reputation for the use or threat of use of violence or other criminal means to cause harm to the person, reputation, or property of any person to collect credit or to punish nonrepayment, there is prima facie evidence that the extension of credit is unenforceable.³

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Footnotes

- ¹ § 206.
- ² Unif. Consumer Credit Code § 5.107.
- ³ Unif. Consumer Credit Code § 5.107(2).

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17 Am. Jur. 2d Consumer Protection § 376

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§ 376. Unconscionability

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  17, 19

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[What constitutes “fraudulent” or “unconscionable” agreement or conduct within meaning of state consumer credit protection act, 42 A.L.R.4th 293](#)

Under the Uniform Consumer Credit Code, with respect to a transaction that is, gives rise to, or leads the debtor to believe will give rise to a consumer credit transaction, if the court as a matter of law finds the agreement or transaction to have been unconscionable at the time it was made or to have been induced by unconscionable conduct, the court may refuse to enforce the agreement.¹ Alternatively, if the court as a matter of law finds any term or part of the agreement or transaction to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, may enforce the remainder of the agreement without the unconscionable term or part, or may so limit the application of any unconscionable term or part as to avoid any unconscionable result.²

The Code spells out the factors to which the court should give consideration when applying the above provisions.³

The Code provides that, with respect to a consumer credit transaction, if the court as a matter of law finds that a person has engaged in, is engaging in, or is likely to engage in unconscionable conduct in collecting a debt arising from that transaction, the court may grant an injunction and award the consumer any actual damages sustained.⁴ Here again, the Code states the factors that are to be given consideration, among others, as they are applicable.⁵

The parties are to be afforded a reasonable opportunity to present evidence to aid the court in making its determination if unconscionability is claimed.⁶ The Code makes provision for the award of reasonable fees to the attorney for the consumer or debtor or to the attorney for the party against whom the claim of unconscionability is made. If the court does not find unconscionability and the consumer or debtor claiming unconscionability has brought or maintained an action he knew to be groundless, the court will award reasonable fees to the attorney for the party against whom the claim is made depending upon the court's determination of the issue.⁷ The remedies discussed above are in addition to remedies otherwise available for the same conduct under law other than the Code although double recovery of actual damages may not be had.⁸ However, for the purpose of these provisions, a charge or practice expressly permitted by the Code is not in itself unconscionable.⁹

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Footnotes

- | | |
|---|---|
| 1 | Unif. Consumer Credit Code § 5.108(1)(a). |
| 2 | Unif. Consumer Credit Code § 5.108(1)(b). |
| 3 | Unif. Consumer Credit Code § 5.108(4). |
| 4 | Unif. Consumer Credit Code § 5.108(2). |
| 5 | Unif. Consumer Credit Code § 5.108(5). |
| 6 | Unif. Consumer Credit Code § 5.108(3). |
| 7 | Unif. Consumer Credit Code § 5.108(6). |
| 8 | Unif. Consumer Credit Code § 5.108(7). |
| 9 | Unif. Consumer Credit Code § 5.108(8). |

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1. In General; Limitations on Creditors' Remedies

§ 377. Default

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  17, 19

The Uniform Consumer Credit Code provides that an agreement of the parties to a consumer credit transaction with respect to default is enforceable only to the extent that the consumer fails to make a payment as required by agreement,¹ or the prospect of payment, performance, or realization of collateral is significantly impaired.² The burden of establishing the prospect of significant impairment is on the creditor.³

A court must look at a variety of factors to determine the existence of significant impairment of the prospect of payment, performance, or realization of collateral under the UCCC; the factors will vary in each case, and there is not a comprehensive list of potentially applicable factors.⁴

Upon default by a consumer, unless the consumer voluntarily surrenders possession of the collateral to the creditor, the creditor may take possession of the collateral without judicial process only if possession can be taken without entry into a dwelling and without the use of force or other breach of the peace.⁵

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Footnotes

¹ [Unif. Consumer Credit Code § 5.109\(1\).](#)

² [Unif. Consumer Credit Code § 5.109\(2\).](#)

- 3 Unif. Consumer Credit Code § 5.109(2).
4 Johnson County Auto Credit, Inc. v. Green, 277 Kan. 148, 83 P.3d 152 (2004).
5 Unif. Consumer Credit Code § 5.112.

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§ 378. Default—Cure of default

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  17, 19

With respect to a consumer credit transaction, after a consumer has been in default for 10 days for failure to make a required payment and has not voluntarily surrendered possession of goods that are collateral, a creditor may give the consumer the notice described in this section.¹ The notice must be in writing, must conspicuously state the information prescribed, and may be in substantially the form set out in the Code.² Special provisions are made for a notice with regard to a consumer credit transaction that is an insurance premium loan.³ If these requirements are not strictly complied with, any repossession by the creditor will be wrongful.⁴ However, this notice requirement applies only to a default arising from failure to make a required payment and is inapplicable to a default arising from the prospect of significant impairment.⁵

If the default consists only of the consumer's failure to make a required payment, the creditor may neither accelerate maturity of the unpaid balance nor take possession of or otherwise enforce a security interest in collateral until 20 days after notice of the consumer's right to cure is given.⁶ Until expiration of the minimum applicable period after the notice is given, the consumer may cure all defaults consisting of a failure to make the required payment by tendering the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges.⁷ If there are defaults on the same obligation, once a creditor has given notice of the right to cure, the Code gives the consumer no right to cure and imposes no limitation on the creditor's right to proceed against collateral; for the purposes of the Code, in open-end credit, the obligation is the unpaid balance of the account, and there is no right to cure and no limitation on the creditor's rights with respect to a default that occurs within 12 months after an earlier default as to which a creditor has been given a notice of right to cure.⁸

Provision is also made as to the giving of notice of a consumer's right to cure a default under an insurance premium loan before a lender may give notice of cancellation of an insurance policy or contract to the insurer.⁹

These provisions do not prohibit a consumer from voluntarily surrendering possession of collateral or prevent the creditor from accelerating maturity and enforcing the obligation and the security interest in the goods at any time after default.¹⁰

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Footnotes

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| 1 | Unif. Consumer Credit Code § 5.110(1). |
| 2 | Unif. Consumer Credit Code § 5.110(2). |
| 3 | Unif. Consumer Credit Code § 5.110(3). |
| 4 | Farmers State Bank v. Haflich, 10 Kan. App. 2d 333, 699 P.2d 553, 41 U.C.C. Rep. Serv. 227 (1985). |
| 5 | Medling v. Wecoe Credit Union, 234 Kan. 852, 678 P.2d 1115, 38 U.C.C. Rep. Serv. 1840 (1984). |
| 6 | Unif. Consumer Credit Code § 5.111(1). |
| 7 | Unif. Consumer Credit Code § 5.111(1). |
| 8 | Unif. Consumer Credit Code § 5.111(2). |
| 9 | Unif. Consumer Credit Code § 5.111(4). |
| 10 | Unif. Consumer Credit Code § 5.111(3). |

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§ 379. Restrictions in matters of practice and procedure

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West's Key Number Digest, Consumer Credit 18

An action by a creditor against a consumer arising from a consumer credit transaction must be brought in the county of the consumer's residence.¹ However, if the action is brought to enforce an interest in land securing the obligation, the action may be brought in the county in which the land is located.² Also, a consumer upon motion may have an action removed to the county of the consumer's current residence if the consumer's residence has changed.³ The action may be brought in the county in which the sale, lease, or loan was made if the residence of the consumer is not within the state.⁴ The Clerk of Court must not accept initial papers offered for filing in the action if, on their face, they show that they do not comply with the foregoing provisions.⁵

The complaint in an action by a creditor against a consumer arising from a consumer credit transaction must allege the facts of the consumer's default, the amount to which the creditor is entitled, and an indication of how that amount was determined.⁶ A default judgment may not be entered in favor of a creditor unless the complaint is verified by the creditor or sworn testimony, by affidavit or otherwise, and is adduced showing that the creditor is entitled to the relief demanded.⁷

At any time after entry of a default judgment against a consumer in an action arising from a consumer credit transaction, the court which rendered the judgment, for cause including lack of jurisdiction and upon motion of a party or its own motion, may stay enforcement of or relieve the consumer from the judgment by order upon just and equitable conditions.⁸

Footnotes

- 1 Unif. Consumer Credit Code § 5.113.
- 2 Unif. Consumer Credit Code § 5.113.
- 3 Unif. Consumer Credit Code § 5.113.
- 4 Unif. Consumer Credit Code § 5.113.
- 5 Unif. Consumer Credit Code § 5.113.
- 6 Unif. Consumer Credit Code § 5.114(1).
- 7 Unif. Consumer Credit Code § 5.114(2).
- 8 Unif. Consumer Credit Code § 5.115.

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§ 380. Limitation on enforcement of security for supervised loan

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  17, 18

The Uniform Consumer Credit Code limits enforcement of a security interest in an item of goods other than a motor vehicle that is possessed by a consumer, is being used by the consumer or a member of a family wholly or partly supported by the consumer, is or may be claimed to be exempt from execution on a money judgment under state law, and is collateral for a supervised loan.¹ Unless a consumer, after written notice to him or her of the consumer's rights under this provision, voluntarily surrenders to the lender possession of any item of goods to which the Code applies, the lender, without an order or process of the court, may not take possession of the item or otherwise enforce the security interest according to its terms,² and a court may order or authorize process only after a hearing upon notice to the consumer of the hearing.³ Such an order or authorization may prescribe appropriate conditions as to payments upon the debt secured or otherwise.⁴ If the court finds upon hearing both that the consumer lacks the means to pay all or part of the debt secured and that continued possession and use of the item is necessary to avoid undue hardship for the consumer or a member of a family wholly or partly supported by the consumer, the court may not order or authorize process.⁵ Upon application of the lender or the consumer and notice to the other and after a hearing and a finding of changed circumstances, the court may vacate or modify an order or authorization.⁶

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Footnotes

- 1 [Unif. Consumer Credit Code § 5.116\(1\)](#).
As to supervised loans under the Code, generally, see [§ 324](#).

- 2 Unif. Consumer Credit Code § 5.116(2).
- 3 Unif. Consumer Credit Code § 5.116(3).
- 4 Unif. Consumer Credit Code § 5.116(3).
- 5 Unif. Consumer Credit Code § 5.116(3).
- 6 Unif. Consumer Credit Code § 5.116(4).

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[Credit card issuer's liability, under state laws, for wrongful billing, cancellation, dishonor, or disclosure, 53 A.L.R.4th 231](#)

Vigorous enforcement of the substantive provisions of the Uniform Consumer Credit Code by private attorneys employed by consumers is encouraged by providing for civil penalties¹ and attorney's fees.²

However, an action to recover a penalty under the Code must be brought by the consumer in an action other than a class action.³

If a creditor violates the substantive provisions of the Code, the consumer may recover actual damages, as well as Code penalties.⁴ While the court has discretion as to the amount of the penalty, the court must impose at least the minimum penalty provided for by the Code.⁵

Except as otherwise provided, a violation of the Code does not impair rights on a debt.⁶

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Footnotes

- 1 §§ 383, 384.
- 2 § 385.
- 3 Unif. Consumer Credit Code § 5.201(1), (3).
- 4 Unif. Consumer Credit Code § 5.201(1).
As to a credit card issuer's liability for wrongful cancellation or dishonor or for wrongful billing, see [Am. Jur. 2d, Credit Cards and Charge Accounts §§ 33, 34](#).
- 5 [United Kansas Bank & Trust Co. v. Rixner](#), 4 Kan. App. 2d 662, 610 P.2d 116 (1980), judgment aff'd, 228 Kan. 633, 619 P.2d 1156 (1980).
- 6 Unif. Consumer Credit Code § 5.201(4).

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§ 382. Right to refund of excess charges

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The Uniform Consumer Credit Code provides that a consumer is not obligated to pay a charge in excess of that allowed by the Code and has a right of refund of any excess charge paid.¹ A refund may not be made by reducing the consumer's obligation by the amount of the excess charge unless the creditor has notified the consumer that the consumer may request a refund, and the consumer has not so requested within 30 days.²

If a consumer has paid an amount in excess of the lawful obligation under the agreement, the consumer may recover the excess amount from the person who made the charge or from an assignee of that person's rights who undertakes direct collection of payments from or enforcement of rights against consumers.³

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Footnotes

- ¹ [Unif. Consumer Credit Code § 5.201\(2\).](#)
- ² [Unif. Consumer Credit Code § 5.201\(2\).](#)
- ³ [Unif. Consumer Credit Code § 5.201\(2\).](#)

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§ 383. Civil penalties; for violation of specified substantive provisions

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The Uniform Consumer Credit Code grants a consumer the right to recover a penalty in an amount determined by the court not less than \$100 nor more than \$1,000 for violation by the creditor of certain substantive provisions of the Code.¹ Within the range of penalties provided, the court may apportion penalties according to the seriousness of the offense and the overall circumstances of each violation.²

If a creditor has contracted for or received a charge in excess of that allowed by the Code or if a consumer is entitled to a refund and a person liable to the consumer refuses to make it within a reasonable time after demand, the consumer may recover a penalty in an amount determined by the court but not less than \$100 nor more than \$1,000.³

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Footnotes

- ¹ [Unif. Consumer Credit Code § 5.201\(1\).](#)
- ² [Comment, following Unif. Consumer Credit Code § 5.201.](#)
- ³ [Unif. Consumer Credit Code § 5.201\(3\).](#)

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17 Am. Jur. 2d Consumer Protection § 384

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§ 384. Civil penalties; for violation of specified substantive provisions—For violation of disclosure provisions

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The Uniform Consumer Credit Code contains separate provisions for penalties for violation of the Federal Truth in Lending Act, other than its provisions concerning advertising of credit terms.¹ The general intention behind these provisions is to impose requirements substantially similar to those imposed by federal legislation and to provide for adequate enforcement so that a state enacting the Code may apply for an exemption from such federal legislation.²

The Code provides that a creditor who violates the provisions of the Truth in Lending Act by failing to disclose information to a person entitled to it is liable to that person for twice the amount of the finance charge in connection with the transaction but not less than \$100 nor more than \$1,000.³ Under certain conditions, an action may be maintained against any subsequent assignee of an original creditor in a credit transaction involving a security interest in land.⁴ An obligor or consumer has all the rights under the Code that he or she has under the federal statute concerning the right of rescission, and the creditor has all liabilities and defenses under the Code as he or she has under the federal statute.⁵

For the purposes of this provision of the Code, a definition of the term "creditor" includes a person who in the ordinary course of business regularly extends or arranges for the extension of credit, or offers to arrange for the extension of credit, and the seller of an interest in land and the lender who makes a loan secured by an interest in land if, but for the rate of the finance charge made in the transaction, the sale or loan would be a consumer credit sale or consumer loan.⁶

The liability of a creditor under the Code provision is in lieu of and not in addition to the creditor's liability under the Truth in Lending Act,⁷ thus precluding double liability if the creditor is sued under both the Code and the Truth in Lending Act.⁸

The Administrator⁹ of the Truth in Lending Act is to adopt rules to keep the Code provisions in harmony with the Truth in Lending Act, and such rules supersede any provisions that are inconsistent.¹⁰

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Footnotes

- 1 [Unif. Consumer Credit Code § 5.203.](#)
As to the Federal Truth in Lending Act, generally, see §§ 1 to 107.
- 2 Comment, following [Unif. Consumer Credit Code § 5.203.](#)
As to the exemption of state-regulated transactions from federal statutory requirements, see § 263.
- 3 [Unif. Consumer Credit Code § 5.203\(1\)\(a\).](#)
As to attorney's fees under this provision, see § 385.
- 4 [Unif. Consumer Credit Code § 5.203\(4\).](#)
- 5 [Unif. Consumer Credit Code § 5.203\(5\).](#)
- 6 [Unif. Consumer Credit Code § 5.203\(6\).](#)
As to the general definition of "creditor" under the Code, see § 307.
- 7 [Unif. Consumer Credit Code § 5.203\(8\).](#)
- 8 Comment, following [Unif. Consumer Credit Code § 5.203.](#)
- 9 §§ 391 to 395.
- 10 [Unif. Consumer Credit Code § 5.203\(9\).](#)

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§ 385. Attorney's fees

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In an action in which it is found that a creditor has violated the Uniform Consumer Credit Code, the court must award to the consumer the costs of the action and to his or her attorneys their reasonable fees.¹ In determining such fees, the amount of recovery on behalf of the consumer is not controlling.² This provision is mandatory³ and will enable consumers to find attorneys to prosecute their cases and, also, will apply even if the case does not go to trial because any settlement offer will have to take the attorney's compensation into account.⁴

The Code provision authorizing the recovery of a civil penalty where a creditor fails to disclose information required to be disclosed by the Federal Truth in Lending Act⁵ authorizes an award of the costs of the action together with reasonable attorney's fees as determined by the court in the case of a successful action to enforce the liability for such penalty.⁶

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Footnotes

- ¹ Unif. Consumer Credit Code § 5.201(8).
- ² Unif. Consumer Credit Code § 5.201(8).
- ³ *Farmers State Bank v. Haflich*, 10 Kan. App. 2d 333, 699 P.2d 553, 41 U.C.C. Rep. Serv. 227 (1985).
- ⁴ Comment, following Unif. Consumer Credit Code § 5.201.
- ⁵ § 384.

6 [Unif. Consumer Credit Code § 5.203\(1\)\(b\).](#)

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§ 386. Correction of violation as precluding penalty

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If a creditor notifies a consumer of a violation of the Uniform Consumer Credit Code before the creditor receives from the consumer written notice of violation or the consumer has brought an action under the Code and if the creditor corrects the violation within 45 days after notifying the consumer, the creditor is not liable for civil penalties.¹ If the violation consists of a prohibited agreement, the giving to the consumer of a corrected copy of the writing containing the violation is sufficient notification and correction.² However, if the violation consists of an excess charge, correction must be made by an adjustment or refund.³

The Code provision authorizing a penalty for violation by the creditor of Federal Truth in Lending Act provisions requiring disclosure⁴ also precludes liability if, within 15 days after discovering an error and before the institution of an action or the receipt of written notice of the error, the creditor notifies the person concerned of the error and makes adjustments in the appropriate account as necessary to assure that such person will not be required to pay a finance charge in excess of the amount or percentage rate actually disclosed.⁵

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Footnotes

¹ [Unif. Consumer Credit Code § 5.201\(6\).](#)

² [Unif. Consumer Credit Code § 5.201\(6\).](#)

3 Unif. Consumer Credit Code § 5.201(6).
4 § 384.
5 Unif. Consumer Credit Code § 5.203(2).

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§ 387. Unintentional violations; bona fide error

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A creditor may not be held liable in an action brought under the Uniform Consumer Credit Code provision authorizing damages and civil penalties if the creditor shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.¹ A similar provision precludes a creditor's liability for penalties with regard to the failure to disclose information required to be disclosed by the Code.²

If an action is brought for penalties for violation of the substantive provisions of the Code³ and the action arises from sales or loans made pursuant to open-end credit, then no action pursuant to this subsection may be brought more than two years after the violations occurred. With respect to violations arising from other consumer credit transactions, no action pursuant to this subsection may be brought more than one year after the scheduled or accelerated maturity of the debt.⁴

If the action is for penalties for making an excess charge or refusing to make a refund⁵ and if the action arises from sales or loans made pursuant to open-end credit, the action must be brought within two years after the violation or after the passage of a reasonable time for refund occurs, but if the excess charges arise from other consumer credit transactions, the action must be brought within one year after the scheduled or accelerated maturity of the debt.⁶ For the purposes of this provision, a reasonable time is presumed to be 30 days.⁷

Actions for penalties for failure of a creditor to disclose information required to be disclosed by the Federal Truth in Lending Act may not be brought more than one year after the date of the occurrence of the violation.⁸

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Footnotes

- 1 [Unif. Consumer Credit Code § 5.201\(7\).](#)
- 2 [Unif. Consumer Credit Code § 5.203\(3\).](#)
- 3 [§ 383.](#)
- 4 [Unif. Consumer Credit Code § 5.201\(1\).](#)
- 5 [§ 383.](#)
- 6 [Unif. Consumer Credit Code § 5.201\(3\).](#)
- 7 [Unif. Consumer Credit Code § 5.201\(3\).](#)
- 8 [Unif. Consumer Credit Code § 5.203\(7\).](#)

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§ 388. Damages or penalties as setoff or defense

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The Uniform Consumer Credit Code provides that damages¹ or penalties² to which a consumer is entitled may be set off against the consumer's obligation.³ Also, such damages or penalties may be raised as a defense to an action on the obligation without regard to the time limitations prescribed by the Code.⁴

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Footnotes

- ¹ § 381.
- ² §§ 383 to 388.
- ³ Unif. Consumer Credit Code § 5.202.
- ⁴ Unif. Consumer Credit Code § 5.202.
As to limitations, see § 387.

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G. Remedies and Penalties

3. Criminal Penalties

§ 389. Generally

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Under the Uniform Consumer Credit Code, a supervised lender who willfully and knowingly makes charges in excess of those permitted by Code provisions applying to supervised loans is guilty of a misdemeanor, which is punishable by fine or imprisonment or both.¹ Also, a person who, in violation of Code provisions applying to authority to make supervised loans, willfully and knowingly engages without a license in the business of making supervised loans or of taking assignments and undertaking direct collection of payments from and enforcement of rights against consumers arising from supervised loans is guilty of a misdemeanor and may be punished by fine or imprisonment or both.²

A person who willfully and knowingly engages in the business of entering into consumer credit transactions or of taking assignments of rights against consumers arising from such transactions and undertaking direct collection of payments or enforcement of these rights, without complying with provisions of the Code concerning notification or payment of fees, is guilty of a misdemeanor and is subject to a fine.³

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Footnotes

- ¹ [Unif. Consumer Credit Code § 5.301\(1\)](#).
As to supervised loans and lenders, generally, see §§ [324](#) to [330](#).
- ² [Unif. Consumer Credit Code § 5.301\(2\)](#).

3

As to the licensing of supervised lenders, see § 325.

[Unif. Consumer Credit Code § 5.301\(3\)](#).

As to such notification and fees, generally, see §§ 397, 398.

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§ 390. Disclosure violations

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Under the Uniform Consumer Credit Code, a person is guilty of a misdemeanor and subject to a fine or imprisonment or both if the person willfully and knowingly: (1) gives false or inaccurate information or fails to provide information which the person is required to disclose under the Federal Truth in Lending Act;¹ (2) uses any rate table or chart, the use of which is authorized by the Truth in Lending Act, in a manner that consistently understates the annual percentage rate determined according to those provisions;² or (3) otherwise fails to comply with any requirement of the provisions on disclosure of the Truth in Lending Act.³ The criminal liability of a person under this provision is in lieu of and not in addition to his or her criminal liability under the Truth in Lending Act, and no prosecution of a person with respect to the same violation may be maintained pursuant to both the Code and the Act.⁴

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Footnotes

- ¹ [Unif. Consumer Credit Code § 5.302\(1\)\(a\).](#)
As to the provisions of the Truth in Lending Act, see §§ [1](#) to [5](#).
- ² [Unif. Consumer Credit Code § 5.302\(1\)\(b\).](#)
- ³ [Unif. Consumer Credit Code § 5.302\(1\)\(c\).](#)
- ⁴ [Unif. Consumer Credit Code § 5.302\(2\).](#)
As to state exemptions, see [§ 263](#).

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H. Administration

1. Powers, Functions, and Duties of Administrator

§ 391. Powers and duties of Administrator

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The Uniform Consumer Credit Code grants a number of specific powers to the Administrator that are in addition to other powers granted by the Code and that are to be exercised within the limitations provided by law.¹ The Administrator may receive and act on complaints, take action designed to obtain voluntary compliance with the Code, or commence proceedings on his or her own initiative;² counsel persons and groups on their rights and duties under the Code;³ establish programs for the education of consumers with respect to credit practices and problems;⁴ make studies appropriate to effectuate the purposes and policies of the Code and make the results of such studies available to the public;⁵ maintain offices;⁶ and appoint attorneys, hearing examiners, clerks, and other employees and agents.⁷

The Administrator is required to enforce the Federal Truth in Lending Act⁸ except to the extent otherwise provided by law.⁹ The Code also requires the Administrator to make annual reports.¹⁰

The Code authorizes the Administrator to adopt, amend, and repeal rules to carry out the specific provisions of the Code but not with respect to unconscionable agreements or fraudulent or unconscionable conduct.¹¹ To keep the Administrator's rules in harmony with the rules of administrators in other jurisdictions that enact substantially the Uniform Consumer Credit Code, the Administrator, so far as is consistent with the purposes, policies, and provisions of this Act,¹² must, before adopting, amending, and repealing rules, advise and consult with administrators in other jurisdictions that have substantially enacted the Code¹³ and, in adopting, amending, and repealing rules, take into consideration the rules of administrators in such other jurisdictions.¹⁴

Except for a refund of an excess charge, no liability is imposed under the Code for an act done or omitted in conformity with a rule, interpretation, or declaratory ruling of the Administrator notwithstanding that after the act or omission, the rule, interpretation, or ruling is amended or repealed or is determined by judicial or other authority to be invalid for any reason.¹⁵

The grant of powers to the Administrator in the provisions of the Code pertaining to administration¹⁶ does not affect remedies available to consumers under the Code or under other principles of law or equity.¹⁷

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Footnotes

- | | |
|----|---|
| 1 | Unif. Consumer Credit Code § 6.104. |
| 2 | Unif. Consumer Credit Code § 6.104(1)(a). |
| 3 | Unif. Consumer Credit Code § 6.104(1)(b). |
| 4 | Unif. Consumer Credit Code § 6.104(1)(c). |
| 5 | Unif. Consumer Credit Code § 6.104(1)(d). |
| 6 | Unif. Consumer Credit Code § 6.104(1)(f). |
| 7 | Unif. Consumer Credit Code § 6.104(1)(g). |
| 8 | §§ 1 to 107. |
| 9 | Unif. Consumer Credit Code § 6.104(2). |
| 10 | Unif. Consumer Credit Code § 6.104(5). |
| 11 | Unif. Consumer Credit Code § 6.104(1)(e). |
| 12 | Unif. Consumer Credit Code § 6.104(3). |
| 13 | Unif. Consumer Credit Code § 6.104(3)(a). |
| 14 | Unif. Consumer Credit Code § 6.104(3)(b). |
| 15 | Unif. Consumer Credit Code § 6.104(4). |
| 16 | Unif. Consumer Credit Code §§ 6.101 to 6.116. |
| 17 | Unif. Consumer Credit Code § 6.115. |

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1. Powers, Functions, and Duties of Administrator

§ 392. Powers and duties of Administrator—Investigatory powers

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The Uniform Consumer Credit Code authorizes the Administrator, if he or she has cause to believe that a person has engaged in conduct or committed an act that is subject to action by the Administrator, to make an investigation to determine whether the person has engaged in the conduct or committed the act.¹ To the extent necessary for this purpose, the Administrator may administer oaths or affirmations and, upon his or her own motion or upon request of any party, subpoena witnesses, compel their attendance, adduce evidence, and require the production of, or testimony as to, any matter relevant to the investigation.²

The Administrator may not make public the name or identity of a person whose acts or conduct he or she investigates pursuant to the above provisions or the facts disclosed in the investigation although this does not apply to disclosures in actions or enforcement proceedings pursuant to the Code.³

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Footnotes

- ¹ [Unif. Consumer Credit Code § 6.106\(1\).](#)
- ² [Unif. Consumer Credit Code § 6.106\(1\).](#)
- ³ [Unif. Consumer Credit Code § 6.106\(4\).](#)

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Part Two. State Legislation; Uniform Laws

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H. Administration

1. Powers, Functions, and Duties of Administrator

§ 393. Powers and duties of Administrator—With respect to supervised financial organizations

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  3.1, 17 to 19

The Uniform Consumer Credit Code provides that, with respect to supervised financial organizations, the powers of examination and investigation and administrative enforcement are to be exercised by the official or agency to whose supervision the organization is subject.¹ All other powers of the Administrator under the Code may be exercised by him or her with respect to a supervised financial organization.²

If the Administrator receives a complaint or other information concerning noncompliance with the Code by a supervised financial organization, he or she must inform the official or agency having supervisory authority over the organization concerned.³ The Administrator may request information about supervised financial organizations from the officials or agencies supervising them.⁴ The Administrator and any official or agency of the State having supervisory authority over a supervised financial organization must consult and assist one another in maintaining compliance with the Code, and they are authorized to jointly pursue investigations, prosecute actions, and take other official action, as they deem appropriate, if either of them otherwise is empowered to take the action.⁵

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Footnotes

- ¹ [Unif. Consumer Credit Code § 6.105\(1\)](#).
As to supervision of loans and lenders, generally, see §§ [324](#) to [330](#).

- 2 Unif. Consumer Credit Code § 6.105(1).
- 3 Unif. Consumer Credit Code § 6.105(2).
- 4 Unif. Consumer Credit Code § 6.105(2).
- 5 Unif. Consumer Credit Code § 6.105(3).

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1. Powers, Functions, and Duties of Administrator

§ 394. Scope of administrative powers

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  3.1, 17 to 19

The administration provisions of the Uniform Consumer Credit Code apply to persons who enter into, solicit, or participate in consumer credit transactions or lead a debtor to believe that a transaction will give rise to a consumer credit transaction in the state¹ or directly collect payments from or enforce rights against consumers arising from consumer credit transactions wherever they are entered into.² These provisions also apply to a person who, in the state, enters into a sale of an interest in land or a loan secured by land if, but for the rate of the finance charge, the sale would be a consumer credit sale or consumer loan but only for the purpose of authorizing the Administrator to enforce the provisions on compliance with the Federal Truth in Lending Act.³

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Footnotes

- ¹ [Unif. Consumer Credit Code § 6.102\(a\).](#)
² [Unif. Consumer Credit Code § 6.102\(b\).](#)
³ [Unif. Consumer Credit Code § 6.102\(c\).](#)
As to compliance with the Truth in Lending Act, see [§ 331](#).

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H. Administration

1. Powers, Functions, and Duties of Administrator

§ 395. Council of advisors on consumer credit

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  3.1, 17 to 19

Under the Uniform Consumer Credit Code, the adopting states are to create a council of advisors on consumer credit, the members of which are appointed by the governor of the state¹ for prescribed terms of office.² The council is to advise and consult with the Administrator concerning the exercise of the Administrator's powers under the Code and may make recommendations to him or her.³ Members of the council may assist the Administrator in obtaining compliance with the Code.⁴

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Footnotes

- ¹ [Unif. Consumer Credit Code § 6.301\(1\).](#)
- ² [Unif. Consumer Credit Code § 6.301\(2\).](#)
- ³ [Unif. Consumer Credit Code § 6.302.](#)
- ⁴ [Unif. Consumer Credit Code § 6.302.](#)

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H. Administration

2. Notification and Fees

§ 396. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  3.1, 17 to 19

The provisions of the Uniform Consumer Credit Code pertaining to notification and fees apply to a creditor who enters into consumer credit transactions in the state.¹ These provisions also apply to a creditor having an office or place of business in the state who takes assignments and undertakes direct collection of payments from or enforcement of rights against consumers arising from such transactions.²

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Footnotes

- ¹ [Unif. Consumer Credit Code § 6.201.](#)
As to these provisions, see §§ [397](#), [398](#).
- ² [Unif. Consumer Credit Code § 6.201.](#)

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H. Administration

2. Notification and Fees

§ 397. Notification

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  3.1, 17 to 19

Persons who are subject to the provisions of the Uniform Consumer Credit Code pertaining to notification¹ must file notification with the Administrator within 30 days after commencing business in the state and, thereafter, on or before January 31 of each year.² This notification must contain the information prescribed by the Code.³

If the information in a notification becomes inaccurate after filing, no further notification is required until the following January 31.⁴

If a creditor fails to file notification in accordance with the above provisions, the Administrator may bring a civil action to recover fees⁵ and a civil penalty determined by the court.⁶

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Footnotes

- 1 § 396.
- 2 Unif. Consumer Credit Code § 6.202(1).
- 3 Unif. Consumer Credit Code § 6.202(1).
- 4 Unif. Consumer Credit Code § 6.202(2).
- 5 § 398.

6 [Unif. Consumer Credit Code § 6.113\(3\).](#)

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H. Administration

2. Notification and Fees

§ 398. Fees

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  3.1, 17 to 19

Persons who are subject to the provisions of the Uniform Consumer Credit Code pertaining to notification and fees and who must, therefore, file notification with the Administrator must pay to the Administrator an annual fee.¹ The fee must be paid with the filing of the first notification and on or before January 31 of each year.² Sellers, lessors, or lenders,³ and assignees,⁴ as persons required to file notification, must pay additional fees based upon the average unpaid balances of obligations arising from consumer credit transactions as specified. A supervised financial organization is exempt from 50% of the fees prescribed by this section to take account of its obligation to pay other fees or charges to officials or agencies to whose supervision it is also subject.⁵ An exemption is also accorded to those persons who pay fees to another state or official pursuant to substantially similar provisions.⁶ A person is subject to a specific charge for failure to pay prescribed fees within 90 days after they are due.⁷

The Administrator may bring a civil action for failure to pay fees as prescribed to recover the fees and a civil penalty in an amount determined by the court not exceeding a specified sum.⁸

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Footnotes

- ¹ [Unif. Consumer Credit Code § 6.203\(1\).](#)
- ² [Unif. Consumer Credit Code § 6.203\(1\).](#)
- ³ [Unif. Consumer Credit Code § 6.203\(2\).](#)

- 4 Unif. Consumer Credit Code § 6.203(3).
5 Unif. Consumer Credit Code § 6.203(4).
 As to supervised lenders, generally, see §§ 324 to 330.
6 Unif. Consumer Credit Code § 6.203(5).
7 Unif. Consumer Credit Code § 6.203(6).
8 Unif. Consumer Credit Code § 6.113(3).

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H. Administration

3. Enforcement

§ 399. Administrative enforcement orders

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  3.1, 17 to 19

The Administrator, after notice and hearing, may order a creditor or a person acting in the creditor's behalf to cease and desist from violating the provisions of the Uniform Consumer Credit Code.¹ However, the Administrator may not issue such an order with respect to unconscionable agreements or fraudulent or unconscionable conduct;² he or she may obtain an injunction against unconscionable agreements or conduct.³

A respondent aggrieved by a cease and desist order of the Administrator may obtain judicial review by filing a petition in the proper court.⁴ The proceeding for review must be initiated within 30 days after a copy of the order of the Administrator is received.⁵

If the respondent does not initiate a timely petition for review, the Administrator may obtain a court order for enforcement of his or her order upon a showing that the order was issued in compliance with the Code provisions, that no timely proceeding for review was initiated, and that the respondent is subject to the jurisdiction of the court.⁶

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Footnotes

¹ [Unif. Consumer Credit Code § 6.108\(1\)](#).

- 2 Unif. Consumer Credit Code § 6.108(6).
- 3 § 401.
- 4 Unif. Consumer Credit Code § 6.108(1).
- 5 Unif. Consumer Credit Code § 6.108(5).
- 6 Unif. Consumer Credit Code § 6.108(1), (5).

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3. Enforcement

§ 400. Injunctions

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  3.1, 17 to 19

The Administrator may bring a civil action to restrain any person from violating the provisions of the Uniform Consumer Credit Code and for other appropriate relief.¹ Such relief includes, but is not limited to, the following: to prevent a person from using or employing practices prohibited by the Code, to reform contracts to conform to the Code, and to rescind contracts into which a creditor has induced a consumer to enter by conduct violating the Code even though a consumer is not a party to the action.² An action for an injunction under this provision may be joined with an action under the Code provisions authorizing civil actions by the Administrator.³

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Footnotes

- ¹ [Unif. Consumer Credit Code § 6.110.](#)
- ² [Unif. Consumer Credit Code § 6.110.](#)
- ³ [Unif. Consumer Credit Code § 6.110.](#)

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3. Enforcement

§ 401. Injunctions—Against unconscionable agreements or conduct

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  3.1, 17 to 19

A.L.R. Library

[What constitutes “fraudulent” or “unconscionable” agreement or conduct within meaning of state consumer credit protection act, 42 A.L.R.4th 293](#)

The Uniform Consumer Credit Code permits the Administrator to bring a civil action to restrain unconscionable agreements and fraudulent or unconscionable conduct including debt collection.¹

The Code enumerates those courses of conduct that may result in a civil action by the Administrator.²

A charge or practice that is expressly permitted by the Code is not in itself unconscionable.³

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Footnotes

- 1 [Unif. Consumer Credit Code § 6.111.](#)
 As to the private remedy, see [§ 376.](#)
- 2 [Unif. Consumer Credit Code § 6.111\(1\).](#)
- 3 [Unif. Consumer Credit Code § 6.111\(5\).](#)

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3. Enforcement

§ 402. Injunctions—Temporary relief

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  3.1, 17 to 19

The Administrator, in connection with an action to enjoin violations of the Uniform Consumer Credit Code or unconscionable agreements or fraudulent or unconscionable conduct, may apply to the court for appropriate temporary relief pending final determination of the action; the court may grant appropriate temporary relief.¹ This provision of the Code leaves to other state law the determination of the circumstances in which temporary relief will be granted.²

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Footnotes

¹ [Unif. Consumer Credit Code § 6.112.](#)

² Comment, following [Unif. Consumer Credit Code § 6.112.](#)

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3. Enforcement

§ 403. Assurance of discontinuance

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  3.1, 17 to 19

If it is claimed that a person has engaged in conduct subject to an order by the Administrator or by a court under the Uniform Consumer Credit Code, the Administrator may accept an assurance in writing that the person will not engage in the same or similar conduct in the future.¹ A violation of such an assurance of discontinuance is a violation of the Code.² This provides a method of resolving controversies without formal proceedings and gives the Administrator considerable flexibility in formulating the terms of an assurance.³

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Footnotes

- ¹ [Unif. Consumer Credit Code § 6.109.](#)
- ² [Unif. Consumer Credit Code § 6.109.](#)
- ³ Comment, following [Unif. Consumer Credit Code § 6.109.](#)

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3. Enforcement

§ 404. Civil actions by Administrator

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  3.1, 17 to 19

Under the Uniform Consumer Credit Code, the Administrator may bring a civil action against a creditor:

(1) to recover actual damages sustained and excess charges paid by one or more consumers who have a right to recover explicitly granted the Code,¹

(2) to recover a civil penalty of no more than \$5,000 for repeatedly and intentionally violating the Code,² or

(3) for the failure to file notification or to pay fees in accordance with the provisions on fees.³

After demand, the Administrator may bring a civil action against a creditor to recover actual damages sustained and excess charges paid by one or more consumers who have a right to recover explicitly granted by the Code, but in such action, the Administrator may not recover penalties.⁴ Under this provision, the Administrator's action is brought on behalf of one or more individual consumers, and the court is required to order amounts recovered to be paid to each consumer or set off against the consumer's obligation.⁵ A defense available to a creditor in a civil action brought by a consumer is available to the creditor in a civil action brought by the Administrator.⁶ However, a civil penalty may not be imposed for making unconscionable agreements or engaging in a course of fraudulent or unconscionable conduct.⁷ In this action, the Administrator may recover the unpaid fees and a civil penalty in an amount determined by the court but not exceeding that prescribed in the Code.⁸

Caution:

If the Administrator brings a civil action to recover a civil penalty for repeated and intentional violations of the Code, the penalty may not be imposed for a violation of the Code occurring more than two years before the action is brought.⁹ Also, an action brought by the Administrator on behalf of consumers to recover actual damages and excess charges is subject to the same limitations as if brought by the consumer or consumers.¹⁰

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Footnotes

- 1 [Unif. Consumer Credit Code § 6.113\(1\).](#)
- 2 [Unif. Consumer Credit Code § 6.113\(2\).](#)
- 3 [Unif. Consumer Credit Code § 6.113\(3\).](#)
As to notification and fees, generally, see §§ [397](#), [398](#).
- 4 [Unif. Consumer Credit Code § 6.113\(1\).](#)
As to a consumer's right to recover actual damages or excess charges, see §§ [381](#), [382](#).
- 5 [Unif. Consumer Credit Code § 6.113\(1\).](#)
- 6 [Unif. Consumer Credit Code § 6.113\(1\).](#)
- 7 [Unif. Consumer Credit Code § 6.113\(2\).](#)
- 8 [Unif. Consumer Credit Code § 6.113\(3\).](#)
- 9 [Unif. Consumer Credit Code § 6.113\(2\).](#)
- 10 Comment, following [Unif. Consumer Credit Code § 6.113](#).
As to limitations in consumers' actions, see § [387](#).

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§ 405. Venue and nonjury trial in actions by Administrator

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  3.1, 17 to 19

The Uniform Consumer Credit Code provides that the Administrator may bring actions or proceedings in a court in a county in which an act on which the action or proceeding is based occurred or in a county in which the respondent resides or transacts business.¹ In addition, the Code specifically provides that the Administrator has no right to trial by jury in an action brought by the Administrator under the Code.²

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Footnotes

¹ [Unif. Consumer Credit Code § 6.116.](#)

² [Unif. Consumer Credit Code § 6.114.](#)

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4. Administrative Procedure and Judicial Review

§ 406. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  3.1, 17 to 19

The Uniform Consumer Credit Code provides that the provisions pertaining to administrative procedure and judicial review apply to the Administrator, prescribe the procedures to be observed by the Administrator in exercising his or her powers, and supplement those provisions of the Code dealing with the Administrator's powers and functions, the provisions on supervised lenders, and the provisions concerned with finance charges and related provisions.¹ Except as otherwise provided, the State Administrative Procedure Act applies to and governs all administrative action taken by the Administrator pursuant to the Code.²

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Footnotes

1

[Unif. Consumer Credit Code § 6.401.](#)

As to state administrative procedure acts, generally, see [Am. Jur. 2d, Administrative Law §§ 17 to 22.](#)

As to supervised loans and lenders, generally, see §§ [324 to 330.](#)

As to finance charges, see §§ [311 to 323.](#)

2

[Unif. Consumer Credit Code § 6.107.](#)

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4. Administrative Procedure and Judicial Review

§ 407. Rule making

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  3.1

As used in the provisions of the Uniform Consumer Credit Code dealing with administrative procedure, the term "rule" means each rule specifically authorized by the Code that applies generally and implements, interprets, or prescribes law or policy or each statement by the Administrator that applies generally and describes his or her procedure or practice requirements or the organization of the Administrator's office; the term includes the amendment or repeal of a prior rule.¹

The Administrator must adopt as a rule a description of the organization of the office of Administrator, stating the general course and method of the operations of the office and the methods the public may use to obtain information or make submissions or requests² and to adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the Administrator or his or her office.³ The Administrator must make available for public inspection all rules and all other written statements of policy or interpretations used by the Administrator in the discharge of his or her functions⁴ and all final orders, decisions, and opinions.⁵ A rule, order, or decision of the Administrator is not valid or effective against any person or party, nor may it be invoked by the Administrator for any person, until it has been made available for public inspection as herein required.⁶

In addition to the adoption of rules by the Administrator pursuant to the foregoing provisions,⁷ any interested person may petition the Administrator requesting the adoption, amendment, or repeal of a rule.⁸ The Administrator must also, within 30 days after the submission of such a petition, either deny the petition in writing, stating his or her reasons for the denial, or initiate rule-making proceedings⁹ in accordance with the provisions on the procedure for the adoption of rules.¹⁰

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Footnotes

- 1 Unif. Consumer Credit Code § 6.402(5).
As to the Administrator's powers as to rules, see § 391.
- 2 Unif. Consumer Credit Code § 6.403(1)(a).
- 3 Unif. Consumer Credit Code § 6.403(1)(b).
- 4 Unif. Consumer Credit Code § 6.403(1)(c).
- 5 Unif. Consumer Credit Code § 6.403(1)(d).
- 6 Unif. Consumer Credit Code § 6.403(2).
- 7 Unif. Consumer Credit Code § 6.403.
- 8 Unif. Consumer Credit Code § 6.407.
- 9 § 408.
- 10 Unif. Consumer Credit Code § 6.407.

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4. Administrative Procedure and Judicial Review

§ 408. Rule making—Procedure

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  3.1

Before the adoption, amendment, or repeal of any rule, the Administrator under the Uniform Consumer Credit Code is required to give at least 30 days' notice¹ of his or her intended action and afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing.² In the case of substantive rules, the opportunity for an oral hearing must be granted if requested by 25 persons, by a governmental subdivision or agency, or by an association having not less than 25 members.³ The Administrator must consider fully all written and oral submissions respecting the proposed rule.⁴ Upon adoption of a rule, the Administrator, if requested to do so by an interested person either prior to adoption or within 30 days thereafter, is to issue a concise statement of the principal reasons for and against its adoption, incorporating the reasons for overruling the considerations urged against its adoption.⁵ A rule is not valid unless adopted in substantial compliance with the above provisions.⁶

The Administrator must file in the office of the Secretary of State a certified copy of each rule adopted by him or her, and the Secretary of State must keep a permanent register of the rules open to public inspection.⁷ The Secretary of State is required to compile, index, and publish all effective rules adopted by the Administrator, and compilations are to be supplemented or revised as often as necessary.⁸ Such compilations must be made available upon request to agencies and officials of the State free of charge and to other persons at prices fixed by the Secretary of State to cover mailing and publication costs.⁹

Each rule adopted is effective 20 days after filing except that the rule may specify a later effective date.¹⁰

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Footnotes

- | | |
|----|---|
| 1 | Unif. Consumer Credit Code § 6.404(1)(a). |
| 2 | Unif. Consumer Credit Code § 6.404(1)(b). |
| 3 | Unif. Consumer Credit Code § 6.404(1)(b). |
| 4 | Unif. Consumer Credit Code § 6.404(1)(b). |
| 5 | Unif. Consumer Credit Code § 6.404(1)(b). |
| 6 | Unif. Consumer Credit Code § 6.404(2). |
| 7 | Unif. Consumer Credit Code § 6.405(1). |
| 8 | Unif. Consumer Credit Code § 6.406(1). |
| 9 | Unif. Consumer Credit Code § 6.406(2). |
| 10 | Unif. Consumer Credit Code § 6.405(2). |

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H. Administration

4. Administrative Procedure and Judicial Review

§ 409. Declaratory judgment as to rules; declaratory rulings

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  3.1

The validity or applicability of a rule of the Administrator under the Uniform Consumer Credit Code may be determined in an action for a declaratory judgment in the proper court if it is alleged that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff.¹ While the Administrator must be made a party to the action, a declaratory judgment may be handed down whether or not the plaintiff has requested the Administrator to pass upon the validity or applicability of the rule in question.²

The Administrator is to provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any Code provision or any of the Administrator's rules,³ and rulings disposing of such petitions have the same status as decisions or orders⁴ in contested cases.⁵

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Footnotes

- 1 [Unif. Consumer Credit Code § 6.408.](#)
- 2 [Unif. Consumer Credit Code § 6.408.](#)
- 3 [Unif. Consumer Credit Code § 6.409.](#)
- 4 [§ 411.](#)

5 [Unif. Consumer Credit Code § 6.409.](#)

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4. Administrative Procedure and Judicial Review

§ 410. Contested cases

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  3.1

Definition:

As used in the provisions of the Uniform Consumer Credit Code dealing with administrative procedure and judicial review, the term "contested case" means a proceeding, including but not restricted to one pursuant to the provisions on administrative enforcement orders and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by the Administrator after an opportunity for a hearing.¹

In a contested case before the Administrator, all parties must be afforded an opportunity for a hearing after reasonable notice.² Opportunity must be afforded all parties to respond and present evidence and argument on all issues involved,³ although informal disposition may be made of a contested case by stipulation, agreed settlement, consent order, or default, unless such a disposition is precluded by law.⁴ Findings of fact, however, must be based exclusively on the evidence and on matters officially noticed.⁵ Oral proceedings or any part of the proceedings must be transcribed on request of any party but at the party's expense.⁶

The record in a contested case must include:

- (1) all pleadings, motions, and intermediate rulings;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections, and rulings thereon;
- (5) proposed findings and exceptions;
- (6) any decision, opinion, or report by the officer presiding at the hearing; and
- (7) all staff memoranda or data submitted to the hearing officer or members of the office of the Administrator in connection with their consideration of the case.⁷

In contested cases heard by the Administrator, the rules of evidence as applied in nonjury civil cases in the courts of the state must be followed; however, evidence that is not admissible under those rules may be admitted if it is necessary (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.⁸ The rules of privilege recognized by law are to be given effect by the Administrator.⁹ Irrelevant, immaterial, or unduly repetitious evidence must be excluded.¹⁰ Objections to evidentiary offers may be made and must be noted in the record.¹¹

If a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form.¹² Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available, but upon request, the parties must be given an opportunity to compare the copy with the original.¹³

A party may conduct cross-examinations required for a full and true disclosure of the facts.¹⁴

In contested cases, notice may be taken of judicially cognizable facts, and in addition, notice may be taken of generally recognized technical or scientific facts within the Administrator's specialized knowledge. Parties must be notified, however, either before or during the hearing or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they must be afforded an opportunity to contest the material so noticed.¹⁵ The Administrator's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.¹⁶

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Footnotes

- 1 Unif. Consumer Credit Code § 6.402(1).
- 2 Unif. Consumer Credit Code § 6.410(1).
- 3 Unif. Consumer Credit Code § 6.410(3).
- 4 Unif. Consumer Credit Code § 6.410(4).
- 5 Unif. Consumer Credit Code § 6.410(7).
- 6 Unif. Consumer Credit Code § 6.410(6).
- 7 Unif. Consumer Credit Code § 6.410(5).
- 8 Unif. Consumer Credit Code § 6.411(1).
- 9 Unif. Consumer Credit Code § 6.411(1).
- 10 Unif. Consumer Credit Code § 6.411(1).
- 11 Unif. Consumer Credit Code § 6.411(1).

- 12 Unif. Consumer Credit Code § 6.411(1).
- 13 Unif. Consumer Credit Code § 6.411(2).
- 14 Unif. Consumer Credit Code § 6.411(3).
- 15 Unif. Consumer Credit Code § 6.411(4).
- 16 Unif. Consumer Credit Code § 6.411(4).

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4. Administrative Procedure and Judicial Review

§ 411. Contested cases—Decisions, orders, and findings

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  3.1

A final decision or order adverse to a party in a contested case before the Administrator must be in writing or stated in the record, and a final decision must include findings of fact and conclusions of law, separately stated.¹ Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings, and if, in accordance with rules of the Administrator, a party submitted proposed findings of fact, the decision is to include a ruling upon each proposed finding.²

Parties must be notified of any decision or order, and upon request, a copy of the decision or order must be delivered or mailed to each party and to the party's attorney of record.³

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Footnotes

- ¹ [Unif. Consumer Credit Code § 6.412.](#)
- ² [Unif. Consumer Credit Code § 6.412.](#)
- ³ [Unif. Consumer Credit Code § 6.412.](#)

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4. Administrative Procedure and Judicial Review

§ 412. License hearings

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, Consumer Credit  3.1

As used in the provisions of the Uniform Consumer Credit Code pertaining to administrative procedure, the term "license" means a license authorizing a person to make supervised loans pursuant to the Code provisions.¹ The term "licensing" includes the Administrator's process respecting the grant, denial, revocation, suspension, annulment, withdrawal, or amendment of a license.²

If the grant or denial of a license is required to be preceded by notice and opportunity for hearing, the Code provisions concerning contested cases apply.³ A revocation, suspension, annulment, or withdrawal of a license is unlawful unless the Administrator, before instituting proceedings, gives notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was afforded an opportunity to show compliance with all lawful requirements for retention of the license.⁴

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Footnotes

- ¹ [Unif. Consumer Credit Code § 6.402\(2\)](#).
As to supervised loans and lenders, generally, see §§ [324](#) to [330](#).
- ² [Unif. Consumer Credit Code § 6.402\(3\)](#).
- ³ [Unif. Consumer Credit Code § 6.413\(1\)](#).
As to contested cases, generally, see § [410](#).

4 [Unif. Consumer Credit Code § 6.413\(2\).](#)

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4. Administrative Procedure and Judicial Review

§ 413. Judicial review

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West's Key Number Digest

West's Key Number Digest, Consumer Credit  3.1, 18

A person who has exhausted all administrative remedies available before the Administrator and who is aggrieved by a final decision in a contested case is entitled to judicial review under the Uniform Consumer Credit Code.¹ This provision does not, however, limit utilization of or the scope of judicial review available by other means of review, redress, relief, or trial de novo provided by law.²

A preliminary, procedural, or intermediate action or ruling of the Administrator is immediately reviewable if review of the final decision of the Administrator would not provide an adequate remedy.³

The filing of a petition for review does not itself stay enforcement of the decision of the Administrator although the Administrator may grant or the reviewing court may order a stay upon appropriate terms.⁴

Proceedings for review under the Uniform Consumer Credit Code are instituted by filing a petition in the proper court within 30 days after notice of the final decision of the Administrator or, if a rehearing is requested, within 30 days after the decision on the hearing.⁵ Copies of the petition must be served upon the Administrator and all parties of record.⁶

Within 30 days after the service of the petition or within further time allowed by the court, the Administrator is to transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review, although by stipulation of all parties to the review proceedings, the record may be shortened, and a party unreasonably refusing to stipulate to limit the

record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.⁷

If, before the date set for hearing, application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the Administrator, the court may order that the additional evidence be taken before the Administrator upon conditions determined by the court.⁸ The Administrator may modify his or her findings and decision by reason of the additional evidence and must file that evidence and any modifications, new findings, or decisions with the reviewing court.⁹

The review must be conducted by the court without a jury and must be confined to the record although in cases of alleged irregularities in procedure before the Administrator, not shown in the record, proof may be taken in the court.¹⁰ The court, upon request, is required to hear oral arguments and receive written briefs.¹¹

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Footnotes

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| 1 | Unif. Consumer Credit Code § 6.414(1). |
| 2 | Unif. Consumer Credit Code § 6.414(1). |
| 3 | Unif. Consumer Credit Code § 6.414(1). |
| 4 | Unif. Consumer Credit Code § 6.414(3). |
| 5 | Unif. Consumer Credit Code § 6.414(2). |
| 6 | Unif. Consumer Credit Code § 6.414(2). |
| 7 | Unif. Consumer Credit Code § 6.414(4). |
| 8 | Unif. Consumer Credit Code § 6.414(5). |
| 9 | Unif. Consumer Credit Code § 6.414(5). |
| 10 | Unif. Consumer Credit Code § 6.414(6). |
| 11 | Unif. Consumer Credit Code § 6.414(6). |

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4. Administrative Procedure and Judicial Review

§ 414. Judicial review—Judgment and appeal

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West's Key Number Digest

West's Key Number Digest, Consumer Credit 18

Upon review of a decision under the Uniform Consumer Credit Code, a court may not substitute its judgment for that of the Administrator as to the weight of the evidence on questions of fact.¹ The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) in violation of constitutional or statutory provisions;
 - (2) in excess of the statutory authority of the Administrator;
 - (3) made upon unlawful procedure;
 - (4) affected by other error of law;
 - (5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
 - (6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.²
- The court may affirm the decision of the Administrator or remand the case for further proceedings.³

An aggrieved party may obtain a review of a final court judgment under the Code by appeal to the proper court, and the appeal is to be taken as in other civil cases.⁴

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Footnotes

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| 1 | Unif. Consumer Credit Code § 6.414(7). |
| 2 | Unif. Consumer Credit Code § 6.414(7). |
| 3 | Unif. Consumer Credit Code § 6.414(7). |
| 4 | Unif. Consumer Credit Code § 6.415. |

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